

STATE OF MICHIGAN
COURT OF APPEALS

In re N. WALTER, Minor.

UNPUBLISHED
December 16, 2014

No. 321867
Ingham Circuit Court
Family Division
LC No. 13-001998-NA

Before: M. J. KELLY, P.J., and CAVANAGH and METER, JJ.

PER CURIAM.

Respondent appeals by right the trial court's order terminating her parental rights to the minor child under MCL 712A.19(b)(3)(g), (3)(i), and (3)(j). Because we conclude there were no errors warranting relief, we affirm.

In November 2013, respondent left her sleeping daughter at a friend's house and went to another friend's house to use drugs. Respondent left a note pinned to the child with a name and contact information for the child's putative father. The friend called the police department, and it notified the Department of Human Services. Although respondent claims to have come back for her daughter the following morning, the Department was unable to locate her until she reported to the Ingham County jail, where she remained incarcerated on a warrant for unpaid child support until the end of January 2014.

The Department petitioned the trial court to remove the child from respondent's care, but in December 2013 it filed an amended petition asking the court to terminate respondent's parental rights. Respondent admitted to the allegations in March 2014, and the trial court scheduled a dispositional hearing for April 2014. At the hearing, the trial court heard testimony from respondent and her caseworker. After hearing the testimony, the court found that the Department had established by clear and convincing evidence grounds to terminate respondent's rights under MCL 712A.19b(3)(g), (i), and (j), and found that termination was in the child's best interest. Accordingly, it ordered the termination of respondent's parental rights.

Respondent argues the trial court erred when it found that the Department established grounds for termination of respondent's parental rights and that termination was in the child's best interests. This Court reviews for clear error the trial court's finding that the Department established a ground for termination and that termination is in the child's best interests. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it,

this Court is left with a definite and firm conviction that a mistake was made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). This Court must also consider the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

Under MCL 712A.19b(3)(g), the court may terminate a parent's rights if it finds by clear and convincing evidence that the parent, "without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Respondent argues that termination under § 19b(3)(g) was premature because the Department did not afford her a reasonable amount of time to demonstrate that she can provide proper care or custody for her daughter.

Respondent had been unemployed and without stable housing throughout the proceedings. Given her difficult childhood, long history of substance abuse, and cyclical pattern of improvement followed by relapses, the psychological evaluator recommended at least a year of sobriety before reunification was considered. The child had already been in foster care for five months, and under the best of circumstances would be in foster care for at least 17 months prior to reunification, roughly half her life. In light of this record, the court did not clearly err when it found that respondent had failed to provide proper care or custody for the child and that there was no reasonable expectation that she would be able to provide proper care within a reasonable time considering the child's age. MCL 712A.19b(3)(g); *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009).

Under MCL 712A.19b(3)(j), the court may terminate a parent's rights if it finds by clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent argues that grounds for termination under § 19b(3)(j) were not proved by clear and convincing evidence because no evidence was presented that the child had ever been harmed, and respondent mother testified that she had never intentionally harmed her child. The Department argued below and on appeal that respondent's failure to deal with her substance abuse problems, and the poor judgment she displayed in moving in with a registered sex-offender after she was released from jail, demonstrate a reasonable likelihood that the child in issue would be unsafe if returned to her exclusive care.

Here, the court made no specific findings with respect to termination under § 19b(3)(j), but ascribed considerable weight to respondent's history of relapses and the fact that she had shown poor judgment by living for a short while after her release from jail with an ex-boyfriend who was a registered sex offender. The court noted that respondent had made some progress, but expressed concern about what could happen if she reverted to the use of drugs or alcohol and the effect such relapse might have on the child.

Despite the court's lack of specificity, the record evidence supports a finding that the Department proved this ground for termination by clear and convincing evidence. In addition to respondent's missed drug screens, which are presumed positives, and her actual positives for alcohol in three screens, she had recently spent the night in jail because of an alcohol-fueled domestic violence incident involving her ex-boyfriend. Respondent is volatile when she drinks.

Given her history of periods of sobriety followed by relapses and the recommendation in a psychological evaluation that she remain sober for a year before reconciliation should be considered, a week or two of sobriety was not enough to inspire confidence that respondent would remain sober and stable.

In addition, it is likely that the unstable nature of her housing situation would result in respondent and her daughter once again moving from place to place. At the time of the hearing, respondent was unemployed and living with her father, who had physically and sexually abused her in the past. She had desires to move into other housing arrangements, but the record does not provide a satisfactory level of confidence that she would be able to establish a stable and nurturing home environment.

Given the record, and the trial court's special opportunity to observe the credibility of the witnesses at the initial disposition, it cannot be said that the court's decision that clear and convincing evidence exists to terminate respondent's parental rights under MCL 712A.19b(3)(j) was clearly erroneous.

Under MCL 712A.19b(3)(i), the court may terminate a parent's rights if it finds by clear and convincing evidence that the parent's rights to one or more siblings "have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." Here, although respondent admitted that her rights to a child had previously been terminated, there was no evidence that termination was because of serious neglect or abuse. The court clearly erred in finding this ground. Although the trial court clearly erred when it found that the Department established MCL 712A.19b(3)(i) as a ground for termination, that error was harmless because only one statutory ground is required for termination. *In re Powers Minor*, 244 Mich App 111, 119; 624 NW2d 472 (2000). The trial court did not err when it found that the Department had established one or more grounds for termination.¹

Once the trial court finds that a ground for termination has been established, it must terminate the parent's parental rights if it also finds "that termination of parental rights is in the child's best interests" MCL 712A.19b(5). "In deciding whether termination is in the child's best interest, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). When making its best-interest determination, the court must consider whether the record as a whole proves by a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013).

¹ Respondent also briefly mentions the Americans with Disabilities Act, but did not properly argue or support a claim of error with regard to that act. Therefore, she has abandoned any claim of error with respect to it. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Respondent said that she loved her daughter and would do whatever it took to get her back. However, the record shows that although respondent and the child were becoming more comfortable in each other's presence, it was difficult to tell whether a parent-child bond existed. The Department noted little improvement with respect to parenting ability, and respondent admitted that the child needed stability, security, and finality, and that she could not provide those at present. See *In re Frey*, 297 Mich App 242, 248-249; 824 NW2d 569 (2012). The child was in a loving foster-care placement, and the foster parent, as well as three of the child's relatives, expressed a desire to adopt her. Respondent also still has serious underlying psychological and substance abuse problems that, according to the psychological consultation, will take at least a year of consistent therapy and abstinence to resolve.

Respondent argues on appeal that the court should have given her more time to comply with the service plan and to benefit from the services offered by the Department. However, it is established law in Michigan that "once a statutory ground [for termination] is established, a parent's interest in the care and custody of his or her child yields to the state's interest in the protection of the child." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009) (internal quotation marks and citations omitted). The court did not clearly err in determining that termination of respondent's parental rights is in the child's best interests.

There were no errors warranting relief.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter